

UNITED STATES  
v.  
JESSE SMITH

IBLA 76-790

Decided February 8, 1977

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring appellant's interest in certain mining claims null and void. OR 13823 (Wash.).

Reversed and remanded.

1. Administrative Procedure: Hearings--Contests and Protests:  
Generally--Mining Claims: Contests--Rules of Practice: Government  
Contests

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

APPEARANCES: William L. Williams, Esq., Kenmore, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jesse Smith appeals from the August 25, 1976, decision of the Oregon State Office, Bureau of Land Management, declaring his interest in the William Wallace and Pumice King placer mining claims

null and void. A complaint against the claims was served upon appellant on July 20, 1976, and an answer was due on August 19, 1976. Appellant's answer, dated August 18, 1976, was filed by mail 1 day late on August 20, 1976. 43 CFR 4.450-6. Relying on 43 CFR 4.450-7(a), the State Office deemed the allegations contained in the complaint as admitted, and declared appellant's interest null and void.

[1] Appellant's attorney stated the same reasons for bringing the instant appeal as he did in another appeal decided today, United States v. William C. Smith, 29 IBLA 7 (1977). Our decision in that case responded to those issues and no further discussion is needed here. Although the answer in the other case was almost 2 months overdue, the answer in the instant case was only 1 day late, and in rendering its decision, the State Office failed to consider whether appellant was entitled to the benefit of the grace period provided under 43 CFR 4.422(a):

Grace Period for filing. Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph does not apply to requests for postponement of hearings under §§ 4.452-1 and 4.452-2.

Appellant's answer was received within 10 days after it was due, and the answer should be accepted if it is determined that the answer was probably transmitted before close of business on August 19, 1976.

The case upon which the State Office relied, Sainberg v. Morton, 363 F. Supp 1259 (1973), does not direct an opposite result. In Sainberg, there was no indication that the answer was transmitted within the required time while the answer in the instant case may have been transmitted before the deadline. The court at p. 1263 expressly noted that there was no pertinent regulatory provision for the Secretary to waive the deadline for filing an answer in the circumstances of that case. The Department has previously held that the grace period provided by 43 CFR 4.422(a), formerly 43 CFR 1850.0-6(b), applies to answers to complaints against mining claims when such answers were probably transmitted prior to the deadline. A. Anton Frederickson, A-30793 (November 28, 1967).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further action consistent with this decision.

Joan B. Thompson

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Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

